



**FEDERAL ELECTION COMMISSION**  
WASHINGTON, D.C. 20463

**Sean Vitrano, Esq.**  
**Federal Public Defender**  
**100 South Charles Street**  
**Tower II, S.1100**  
**Baltimore, Maryland 21201**

**JUL 6 2009**

**RE: MUR 6201**  
**Alan B. Fabian**

**Dear Mr. Vitrano:**

On February 27, 2009, the Federal Election Commission (the "Commission") notified your client, Alan B. Fabian, that the Commission had ascertained information in the normal course of carrying out its supervisory responsibilities indicating that Mr. Fabian may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act").

Upon further review of the available information and information provided by your client, the Commission, on June 24, 2009, voted to dismiss this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

First, the Act provides that no person shall make a contribution in the name of another person or knowingly permit his or her name to be used to effect a contribution in the name of another. 2 U.S.C. § 441f. The Act further provides that a political committee cannot knowingly accept a contribution made by one person in the name of another person. *Id.* Second, the Act prohibits corporations from making contributions in connection with federal elections, and prohibits corporate officers from consenting to such contributions. 2 U.S.C. § 441b. The Act also prohibits any political committee from knowingly accepting or receiving any prohibited corporate contribution. *Id.* Finally, the Act requires treasurers of political committees to file accurate reports of receipts and expenditures. 2 U.S.C. § 434(b). The Commission cautions Mr. Fabian to take steps to ensure that his conduct is in compliance with the Act and the Commission's regulations.


Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

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Sean Vitano, Esq.  
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If you have any questions, please contact Kasey Morgenheim, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Mark Allen  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

4  
5 **RESPONDENT:**

Alan B. Fabian

**MUR 6201**

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7 **I. GENERATION OF MATTER**

8 This matter was generated based on information ascertained by the Federal Election  
9 Commission ("the Commission") in the normal course of carrying out its supervisory  
10 responsibilities. See 2 U.S.C. § 437g(a)(2).

11 **II. FACTUAL SUMMARY**

12 As part of the criminal investigation of Fabian's scheme of fraudulent financial activities  
13 totaling tens of millions of dollars, the Department of Justice, U.S. Attorney's Office, District of  
14 Maryland ("DOJ") uncovered evidence that Fabian may have violated the Federal Election  
15 Campaign Act of 1971, as amended ("the Act"), by transferring \$25,000 to the American Patriot  
16 PAC from Fabian's company Strategic Partners International ("SPI"), in the names of several  
17 individuals.

18 The DOJ criminal investigation resulted in Fabian's indictment in November 2007, plea  
19 agreement in May 2008, and sentencing in October 2008. He pleaded guilty to mail fraud and  
20 filing a false tax return as part of a scheme to defraud his former employer, Maximus, Inc., an  
21 equipment leasing broker, and several financial institutions of approximately \$40 million  
22 between 2001 and 2007. Fabian is currently serving a nine-year sentence at Lewisburg Federal  
23 Penitentiary and filed for bankruptcy in December 2008. As part of his plea agreement, Fabian  
24 agreed to forfeit his interest in his home, several other properties, and multiple companies.

25 A small part of Fabian's scheme – described in the facts supporting his guilty plea – may  
26 have included campaign finance violations. These facts are set forth on page 16 of the

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1 Government's Sentencing Memorandum. According to the Memorandum, Fabian founded  
2 American Patriot PAC in December 2003. In July 2004, while serving as the PAC's treasurer,  
3 he filed a disclosure report with the Commission covering the period of December 16, 2003,  
4 through June 30, 2004. The report stated that the PAC had received \$36,000 in contributions,  
5 including \$10,000 from himself, \$6,000 from his wife, Jaqueline Richards-Fabian, and \$5,000  
6 each from four other individuals: Mike Kennedy, John Gaffigan, Cheryl Spencer, and Lynn  
7 Farrow.<sup>1</sup> Fabian reported \$25,000 of the contributions as received on June 7, 2004, comprised of  
8 \$5,000 from Fabian and the contributions from Kennedy, Gaffigan, Spencer, and Farrow.  
9 However, the only funds deposited into the American Patriot PAC bank account around this time  
10 were a \$30,000 transfer on June 7, 2004, from the corporate account of SPI, a company Fabian  
11 used for his other fraudulent financial activities. Therefore, it appears American Patriot PAC did  
12 not receive \$25,000 in individual contributions, but rather received fraudulently derived  
13 corporate funds from SPI.

14 The Commission sent a pre-reason to believe notification letter to Fabian, advising him of  
15 the Commission's information regarding his use of SPI funds to make contributions in the names  
16 of others to American Patriot PAC; the Act's prohibition against using, or permitting one's name  
17 to be used, to effect the contribution of another person; and inviting him to respond. Fabian  
18 provided a response stating that the \$30,000 transferred from SPI to the PAC was returned to SPI  
19 and replaced with personal contributions. Fabian Response at 1. The limited available  
20 information does not support Fabian's claim that the SPI funds were replaced with personal  
21 contributions, nor would the replacement vitiate any potential violation of the Act. Fabian also  
22 asserted that the SPI bankruptcy proceedings resulted in the Republican National Committee

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<sup>1</sup> These four individuals were referenced by their initials in the Sentencing Memorandum. Their names were spelled out in the PAC's report.

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1 returning \$25,000, "which the \$30,000 contribution funded." *Id.* The public record does not  
2 indicate that American Patriot PAC made a contribution to the Republican National Committee;  
3 however, American Patriot PAC's 2004 October Quarterly Report disclosed a \$25,000  
4 contribution to the National Republican Congressional Committee ("NRCC") on July 16, 2004.  
5 In July 2006, the NRCC reportedly reached a settlement to return \$25,000 in SPI's bankruptcy  
6 proceedings. *See Rachel Sams, Nonprofit Exec Fabian Dogged by Legal Disputes, Bankruptcy*  
7 *Case*, Baltimore Business Journal, August 24, 2007. On August 1, 2006, the NRCC disclosed a  
8 \$25,000 disbursement to Zvi Guttman, the SPI bankruptcy trustee.

9 **III. ANALYSIS**

10 Fabian's use of corporate funds to make contributions may implicate several prohibitions  
11 of the Act. First, the Act provides that no person shall make a contribution in the name of  
12 another person or knowingly permit his or her name to be used to effect a contribution in the  
13 name of another. 2 U.S.C. § 441f. This prohibition extends to knowingly assisting another  
14 person in making a contribution in the name of another. 11 C.F.R. § 110.4(b)(1)(iii). The Act  
15 further provides that a political committee cannot knowingly accept a contribution made by one  
16 person in the name of another person. 2 U.S.C. § 441f.

17 Second, the Act prohibits corporations from making contributions in connection with  
18 federal elections, and prohibits corporate officers from consenting to such contributions.  
19 2 U.S.C. § 441b. The Act also prohibits any political committee from knowingly accepting or  
20 receiving any prohibited corporate contribution. *Id.* The Act also addresses violations that are  
21 knowing and willful. A knowing and willful violation may be established "by proof that the  
22 defendant acted deliberately and with knowledge" that an action was unlawful. *United States v.*  
23 *Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). In *Hopkins*, the court found that an inference of a

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1 knowing and willful violation could be drawn "from the defendants' elaborate scheme for  
2 disguising their . . . political contributions." *Id.* at 214-15.

3 The available information indicates that that the source of the \$25,000 in individual  
4 contributions reported received by American Patriot PAC on June 7, 2004, was actually SPI  
5 funds transferred by Fabian rather than the individuals Fabian disclosed on the PAC's report.  
6 Fabian served as the PAC's treasurer and likely knew of the Act's prohibitions. Thus, it appears  
7 that Fabian may have knowingly and willfully violated 2 U.S.C. § 441f by knowingly assisting  
8 SPI in making contributions in the names of himself, Mike Kennedy, John Gaffigan, Cheryl  
9 Spencer, and Lynn Farrow. It further appears that Fabian may have consented to, as a corporate  
10 officer of SPI, and accepted, as the PAC's treasurer, prohibited corporate contributions in  
11 knowing and willful violation of 2 U.S.C. § 441b.

12 Finally, Fabian may have violated the Act when he made false statements in American  
13 Patriot PAC's disclosure reports. As treasurer of American Patriot PAC, Fabian was required to  
14 file accurate reports of receipts and expenditures. *See* 2 U.S.C. § 434(b). Accordingly, it  
15 appears that Fabian may have knowingly and willfully violated the Act when he filed the July  
16 2004 report that identified the purported contributors as the source of \$25,000 in receipts, rather  
17 than SPI.

18 For the following reasons, however, the Commission dismisses MUR 6201 as a matter of  
19 prosecutorial discretion and cautions Fabian against violating the Act. *See Heckler v. Chaney*,  
20 470 U.S. 821 (1985). Fabian is currently serving a nine-year prison sentence and has filed for  
21 bankruptcy. In addition, the activity in question took place in 2004 and American Patriot PAC  
22 terminated in March 2006. Although the conduct described above was at issue in the criminal  
23 proceeding, Fabian's plea did not include admissions of any campaign finance violations. The

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- 1 Commission cautions Fabian against violating 2 U.S.C. §§ 441b, 441f, and 434(b) by using**
- 2 corporate funds to make contributions in the name of another and misreporting.**

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